Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
A National Broadband Plan For Our Future	)	GN Docket No. 09-51

COMMENTS OF
AD HOC TELECOMMUNICATIONS USERS COMMITTEE

Susan M. Gately
SMGately Consulting, LLC
84 Littles Ave
Pembroke, MA 02359
617-598-2223

Economic Consultant to
Ad Hoc Telecommunications
Users Committee

Andrew Brown
Levine, Blaszak, Block & Boothby, LLP
2001 L Street, NW, Suite 900
Washington, DC 20036
202-857-2550

Counsel for Ad Hoc Telecommunications
Users Committee

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SUMMARY

The Commission has considered reforming the current revenues-based USF contribution methodology for over a decade. The current methodology is unsustainable as it requires a shrinking base of revenues for telecommunications services to continue supporting a $9 billion Universal Service Fund. The obvious trend of the past ten years will not change and, having observed a steady increase in the contribution factor over this entire period, the Commission can no longer adopt incremental improvements to the existing system and expect a different result.

Among the three methodology reform alternatives under consideration by the Commission, a numbers-based assessment offers the best option for achieving the Commission's stated goals of efficiency, fairness, and sustainability. Ad Hoc also believes that a numbers-based system is the most competitively neutral and technology agnostic. Ad Hoc has urged the Commission to adopt a numbers-based methodology for the past decade and still believes that a numbers-based assessment would provide a predictable and stable funding base for universal service, distribute the burden for supporting USF equitably, and eliminate market distortions caused by the Commission determining on an *ad hoc* basis the services that are assessable for USF contribution-purposes.

It is difficult to conceive of a system that is more simple, straightforward or efficient to implement and administer than a numbers-based methodology. There is a finite, countable, and easily verifiable quantity of telephone numbers in use, and the Commission already has in place procedures requiring carriers to report number inventories and usage, assuring that no additional administrative burdens are imposed

by adoption of the new methodology. Calculation of the per-number assessment required to fund USF disbursements is simple and the resulting monthly assessment is fair and affordable—less than $1.00 per number.

To ensure equitable and non-discriminatory imposition of the contribution obligation, every number from the North American Numbering Plan that is otherwise unavailable for use would be assessed the monthly per number fee. The only exception to the assessment would be for numbers assigned to Lifeline subscribers. Limiting exceptions to the assessments is simple in a numbers-based system and reinforces the system's predictability and sustainability by maintaining the size of the assessable base of numbers.

Lastly, a numbers-based methodology is competitively neutral and technology agnostic. A wide variety of services, devices and technologies use numbers. Whether an end user connects to the network over a wireline, wireless, cable or satellite connection or uses a traditional landline voice phone or a wireless smart phone, a per-number assessment associated with the end user's choice of connection and technology would be uniformly applied and equitably distributed.

The other alternatives under consideration, a connections-based assessment and a reform of the current revenues-based system, are both viable options for reducing many of the problems with the current system if they are properly implemented. But both of these alternatives are less desirable than a numbers-based system because they are more complicated to implement and administer and they require the Commission to continue "drawing lines" regarding the types and levels of assessment, decisions that risk distorting markets and stifling innovation in a way that a numbers-based methodology does not. Nevertheless, Ad Hoc could support adoption of either of these alternatives so long as they are implemented in a fair and non-discriminatory manner that spreads the contribution burden equitably across contributors and does not rely upon an open-ended “residual” mechanism funded by business users or the services purchased by business users to address any funding shortfalls in the universal service fund.

A connections-based methodology would be a substantial improvement over the revenues-based system although the Commission would face significant challenges in implementing and administering such a system. Accurate connection inventories do not currently exist, and the Commission would need to develop new procedures to collect the data associated with connections and to verify and audit such data on an ongoing basis.

The Commission will likely have to establish “weighted” assessments based on the speed or capacity of a connection and ensure that they are fair and non-discriminatory. Prior experience in this proceeding indicates that obtaining consensus on appropriate tier assessments will be difficult. The Commission must ensure that any connections-based methodology is conceived and implemented in a fair and non-discriminatory manner and that universal service contribution burdens are distributed equitably across services, users, and connection tiers. Ad Hoc will not support a connections-based methodology that imposes greater assessments on business connections than those imposed on residential/mass market connections or that includes any kind of residual funding mechanism that relies upon extraordinary assessments on business connections or services to fill shortfalls in USF funding.

Finally, the current revenues based system is deeply flawed, and incremental improvements made in the past have proven inadequate to increase the efficiency, fairness, or sustainability of the system. Unless the Commission significantly expands the base of assessable revenues to include broadband Internet access service and reduce the contribution factor dramatically, perpetuation of the existing revenues-based system will not achieve the Commission's stated goals. In expanding the base, the Commission should focus on the revenues of services and providers that are significant and likely to expand the scope of the base in a meaningful way. The Commission should continue to keep in place common sense *de minimis* exceptions and other exemptions for services that do not materially contribute to the revenue base or the inclusion of which is not justified relative to the costs imposed on providers of such services to comply with the administrative burdens of contributing.

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COMMENTS OF
AD HOC TELECOMMUNICATIONS USERS COMMITTEE

The Ad Hoc Telecommunications Users Committee ("Ad Hoc") hereby submits its Comments in response to the Commission's April 30, 2012 Further Notice of Proposed Rulemaking in the above-captioned proceedings.[1] As described in greater detail below, Ad Hoc reiterates its longstanding support for the adoption of a numbers-based assessment. Among the three methodology reform alternatives identified by the Commission in the *Further Notice,*[2] a numbers-based assessment offers the best option for achieving the Commission's stated goals of efficiency, fairness, and sustainability.

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[1] *Universal Service Contribution Methodology*, WC Docket No. 06-122, *A National Broadband Plan For Our Future*, GN Docket No. 09-51, Further Notice of Proposed Rulemaking, FCC 12-46 (released April 30, 2012) (the "*Further Notice*").

[2] The three alternatives identified in the *Further Notice* and about which the Commission has sought comment are: (1) continuation of the existing carrier revenues-based model with possible broadening of the base of services for which revenues are assessed. *Id.* ¶¶ 98-218; (2) adoption of a connections-based model wherein a subscriber connection to a communications network is assessed a fee, possibly including different tiers of assessment depending upon the capacity or speed of the connection. *Id.* ¶¶ 219-83; or (3) adoption of a numbers-based model in which a fee is assessed upon providers based on their customers' use of numbers from the North American Numbering Plan. *Id.* ¶¶ 284-341.

Over the last decade, Ad Hoc has submitted numerous filings in the record of this proceeding that explain how a numbers-based assessment would provide a predictable and stable funding base for universal service, distribute the burden for supporting USF equitably, and eliminate market distortions caused by the Commission determining on an *ad hoc* basis the services that are assessable for USF contribution purposes.[3] While the obviousness of the need to reform the contribution methodology has increased dramatically since the Commission last seriously considered reform alternatives, the reasons for adopting a numbers-based assessment remain the same: a numbers-based system still offers the simplest and most equitable option for reform.

The other alternatives identified in the Further Notice, a connections-based assessment and a reform of the current revenues-based system, are both viable options for reducing many of the problems with the current system. But both alternatives are less desirable because they are more complicated to implement and administer than a numbers-based system and they require the Commission to continue "drawing lines" regarding the types and levels of assessment, decisions that risk distorting markets and stifling innovation in a way that a numbers-based methodology does not. Nevertheless, Ad Hoc could support adoption of either of these alternatives to a numbers-based assessment so long as they are implemented in a fair and non-discriminatory manner that spreads the contribution burden equitably across contributors and does not rely

[3] *See* Comments of the Ad Hoc Telecommunications Users Committee on the Second Further Notice, CC Docket No. 96-45 (filed Feb. 28, 2003) ("Ad Hoc Feb. 28, 2003 Comments"); Reply Comments of the Ad Hoc Telecommunications Users Committee on the FNPRM, CC Docket No. 96-45 (filed Apr. 18, 2003) ("Ad Hoc Apr. 18, 2003 Reply Comments"); *Ex Parte* Letter from James S. Blaszak on behalf of the Ad Hoc Telecommunications Users Committee to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45 (filed Nov. 23, 2005) ("Ad Hoc Nov. 23, 2005 *Ex Parte* Letter"); Reply Comments of Ad Hoc Telecommunications Users Committee, WC Docket 06-122 (filed Sept. 8, 2006); *Ex Parte* Letter from James S. Blaszak on behalf of the Ad Hoc Telecommunications Users Committee to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122 (filed Nov. 19, 2007) ("Ad Hoc Nov. 19, 2007 *Ex Parte Letter*").

upon an open-ended "residual" mechanism funded by business users or the services purchased by business users to address any funding shortfalls in the universal service fund.

I. REGARDLESS OF WHICH ALTERNATIVE IT SELECTS, THE COMMISSION MUST REFORM THE CONTRIBUTION METHODOLOGY WITHOUT FURTHER DELAY.

For over a decade, the Commission has considered reforming the current revenues-based USF contribution methodology. Many parties, including Ad Hoc, have long urged the Commission to reform the contribution methodology based on well-established predictions that the current system for collecting USF revenues was unsustainable given the clear direction of changes in the market for assessable telecommunications services. Those predictions have proven accurate as evidenced by the explosive growth of the USF contribution factor from 7.28% in the third quarter of 2002 to the current 15.7% in the third quarter of 2012, an astonishing 116% increase. The time for incremental reform has passed, and Ad Hoc urges the Commission to fix the structural problems inherent in the current revenues-based system.

The causes for the current system's failures are well established and recognized by the Commission in the *Further Notice*.[4] As the contribution base of assessable telecommunications services shrinks, the contribution factor continues to rise. This embedded structural pattern distorts market behavior by encouraging migration to non-assessable services, leading to further reductions in the assessable base and required increases in the contribution factor. The repetition of this pattern creates the so-called

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[4] *Further Notice* ¶¶ 18-21.

USF "death spiral," identified for the Commission over a decade ago.[5] Unless the Commission fundamentally reforms the basis for assessing USF contributions or dramatically expands the base of assessable services to create a level playing field among end-users and services, this pattern will continue.

The costs to businesses and consumers during the past decade of inaction have been significant. For every $10 million a company spends on telecommunications, it now must spend $1.54 million in contributions to USF. The volatility in the quarterly factor coupled with the sheer size of the required quarterly contribution creates uncertainty and significant economic drag on potential investments and expenditures, discouraging deployment of assessable technologies and services, regardless of whether they are the best choice for an end-user. The contribution methodology should not be permitted to distort market choices or stifle innovation and investment in this manner any longer.

Although the case for reform is the same as a decade ago, the imperative is greater given inexorable market forces that will continue to exacerbate existing conditions. The Commission also has a clear mandate to complete reform now. Whereas the just-completed USF transformation proceeding that significantly reformed the High Cost and Low Income Funds addressed the growth of the fund's disbursements,[6] the Commission must now complete the second half of its effort by

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[5] *See* Comments of the Coalition for Sustainable Universal Service on the FNPRM, CC Docket No. 96-45 (filed Apr. 22, 2002) at 23-28.

[6] *See Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663 (2011); *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 *et al.*, Report and Order, 26 FCC Rcd. 9022 (2011); *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (rel. Feb. 6, 2012).

transforming the funding mechanism. Comprehensive reform is required to establish a sustainable, equitable and predictable funding mechanism. Modest adjustments to the existing system may, as they have in the past, temporarily slow the USF death spiral, but they will not fix it.

II. AD HOC SUPPORTS EACH OF THE COMMISSION'S STATED GOALS FOR CONTRIBUTION METHODOLOGY REFORM.

Ad Hoc supports each of the Commission's stated goals for reform and proposes that the Commission adopt a separate additional goal that expressly requires that any contribution methodology be "competitively neutral and technology agonistic." We encourage the Commission to use the adopted reform goals to analyze rigorously whether a specific contribution methodology alternative is like to satisfy the stated goal. As part of that consideration, we urge the Commission to consider the likely implementation of each alternative, and whether the goals will be achieved in practice by each alternative. As set forth in greater detail below, we believe that a numbers-based methodology offers the clearest path forward and the greatest likelihood for success in achieving these stated goals. The other alternatives proposed, though less desirable, could significantly mitigate the flaws in the current methodology if they are implemented carefully to achieve the stated goals.

A. Efficiency

Ad Hoc supports the Commission's proposal to ensure that any reform to the contribution methodology make the system more efficient. To that end, the contribution rules should be simpler for contributors to understand and apply, and the system should be easier for the Commission and USAC to administer. Ad Hoc encourages the

Commission to adopt a methodology that lends itself to specific and easily applicable rules so that, following adoption of reforms, discretion in the determination of contribution requirements by providers and the Commission is as limited as possible.

The current revenues-based system relies upon an unstable base of diminishing carrier revenues for interstate telecommunications services, overly complicated reporting and allocation requirements that permit too much provider discretion, and somewhat ambiguous and arbitrary determinations by the Commission about what constitutes an assessable and non-assessable service. The costs to providers in complying with the currently broken system and any reformed system are ultimately passed on to end users, either implicitly in the costs of the underlying service, or explicitly as an additional line item surcharge to cover administrative fees. These additional costs divert economic resources from job creation and investment and are significant enough to drive end-user choices about the types of services purchased. The Commission should not perpetuate the inefficiencies in the current system that have forced end-user decisions based on a market distorted by the current regulatory regime.

B. Fairness

Ad Hoc supports the Commission's goal that a reformed methodology fairly apply assessment burdens to services, providers, and end users. Consistent with the statutory mandate that contribution requirements be made on an "equitable and non-discriminatory basis," a reformed contribution methodology cannot fairly require one type or class of service to fund USF while a reasonably substitutable alternative bears no such burden. Providers should be assessed on a level playing field. And, importantly, specific classes of end users should not be required to fund USF at higher levels than other classes of end users. This includes assessing the types of services purchased by specific end users (such as special access services purchased primarily by business customers) while excluding reasonably equivalent services purchased by other types of customers.

As the Commission notes in paragraph 24 of the *Further Notice,* providers of services are directly assessed for contribution obligations, but end users ultimately bear the costs associated with such assessments, directly or indirectly. Therefore, the Commission must remain cognizant of the downstream effects of any reformed methodology. Reforms that inequitably distribute the burden of contribution assessments will create market distortions by reallocating capital and other resources, potentially influencing end-user choices by the unintended consequences of ill-conceived and poorly implemented regulation.

To be clear, it would be fundamentally *unfair* and inconsistent with the Commission's stated goals to include any kind of residual funding mechanism for shortfalls resulting from any reforms to the methodology. There is no legal or rational basis for imposing additional open-ended funding obligations on a particular class of service or end users that, in effect, subsidizes reduced funding obligations for another class of services or end users.

C. Sustainability

Ad Hoc strongly supports reforms that improve the certainty, predictability, and stability of the universal service contribution methodology. The current system is funded by an unstable base of carrier revenues that is inarguably shrinking, resulting in unpredictable—and volatile—quarterly contribution factors that make effective budgeting and long term planning for future purchases and innovation in network services exceedingly difficult.

The Commission rightly seeks to develop a methodology that will accommodate changes in market conditions. We encourage the Commission, however, to avoid a fruitless pursuit of the perfect, completely future-proofed contribution methodology. Change in the marketplace for telecommunications services is inevitable, and an improved contribution methodology can certainly address long predicted changes to the marketplace that have resulted in the instability and inadequacy of the current system. But the Commission need not develop an overly complicated mechanism, or allow the process to continue indefinitely in an attempt to develop a system that "adapts" to currently unknown market changes.[7]   Instead, the Commission needs to implement reform quickly and develop a system that can *accommodate* changes in the marketplace. Ultimately, however, the Commission must reserve flexibility to revisit any methodology that it adopts if market conditions require, and failing to adopt obviously effective reforms today because they are not "future-proofed" for the unknown technological and market changes of tomorrow would be a mistake.

In the short and medium term, the Commission needs to adopt a funding regime that relies upon a stable base. In addition, reforms should also be adopted that reduce the volatility in contribution obligations so that end users have a reasonably predictable notion of what their costs of universal service will be when planning budgets and making procurement decisions.

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[7] *Further Notice* ¶ 25.

D. Competitive Neutrality

Although the Commission specifies that fairness includes the concept of competitive neutrality,[8] we encourage the Commission to adopt this concept as a separate goal of reform and include the related concept of neutrality with respect to specific technologies. To the greatest extent possible consistent with the statutory requirements governing universal service contributions, the Commission should adopt reforms to the contribution methodology that have as little influence as possible on what service offerings consumers choose. The Commission should allow the market, not regulations governing contribution to universal service, to pick market winners and losers. Furthermore, the Commission must not adopt any methodologies that inadvertently undermine stated national priorities to encourage innovation and wider deployment of broadband.

III. A PURE NUMBERS-BASED ASSESSMENT OFFERS THE BEST OPTION FOR ACHIEVING THE DESIRED GOALS OF REFORM CONSISTENT WITH THE STATUTORY REQUIREMENTS OF THE ACT.

Ad Hoc has long supported adoption of a pure numbers-based methodology because it is the most administratively simple, efficient, and fair method for assessing universal service contribution obligations.[9] A numbers-based assessment further satisfies the important goal of imposing assessments on a competitively neutral and technology agnostic basis; if properly implemented, it would spread contribution obligations equitably across all providers and services based on a single and measurable unit of usage. In addition, numbers provide a sustainable base against

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8 *Further Notice* ¶ 24.

9 Ad Hoc Nov. 23, 2005 *Ex Parte* Letter.

which assessments can be levied for the foreseeable future, establishing the specific, predictable and sufficient mechanisms to preserve and fund universal service that are mandated by Section 254 of the Act.

A. A Numbers-Based Assessment is the Most Administratively Efficient and Easily Implemented Contribution Methodology.

The Commission states that "one goal of reform should be to make compliance with and administration of the contribution system more efficient."[10] As noted above, Ad Hoc agrees with the Commission's inclusion of increased efficiency as a goal for methodology reform in this proceeding. The current system is needlessly complex and relies upon a base of revenues that is difficult to calculate accurately. The distinction between assessable and non-assessable services based upon periodic modifications to Form 499 instructions is highly consequential and drives market behavior but is not undertaken by the Commission in an organized or methodical way. Furthermore, positive changes in the market for services that have resulted in the offering of bundled service packages makes allocation of revenues for compliance purposes between assessable and non-assessable services, and by jurisdiction of the service, very difficult. The administrative burden to comply with reporting and contribution requirements is also significant.

The beauty of a numbers-based assessment is its simplicity and efficiency. There is a finite, countable, and easily verifiable quantity of telephone numbers in use. Assuming that the Commission limits the quantity of non-assessable numbers to Lifeline subscribers, an assessable ten digit number will not vary from user to user or from

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10 *Further Notice* ¶ 23.

service to service—every assigned number will constitute an assessable unit. By determining up-front what constitutes an assessable number, the Commission will not have to engage in any further line-drawing or subjective decision-making about what units should be assessed for contribution purposes as part of its ongoing administration of the numbers-based contribution system. Administration of a numbers-based system by the Commission would be simple, straightforward and cost-effective.

Similarly, contributors will have clear, bright-line rules that eliminate the need for them to exercise any discretion in determining what services or what numbers are subject to assessment. This process will be significantly less complex and burdensome than the current requirements to calculate and report revenues associated with assessable services. As a result, carriers will have greatly reduced administrative costs in complying with the contribution requirements which could potentially reduce the downstream administrative expenses currently imposed on end users by some carriers.[11]

In addition, a numbers-based assessment methodology will not increase the administrative burden on carriers because, as previously noted by the Commission,[12] the relevant numbers are already tracked by carriers and the FCC. In particular, pursuant to Section 52.15(f)(6) of the Commission's rules, telephone carriers that receive numbering resources must submit, on a semi-annual basis, "a five-year forecast

[11] *See, e.g.,* GP-3.2.2. Administrative Expense Fee, AT&T Business Service Guide General Provisions, http://serviceguidenew.att.com (last visited July 5, 2012). According to AT&T, the AT&T Administrative Expense Fee, currently set at 0.88% of the net charges for assessable fees for Universal Service contributions, "recovers a portion of AT&T's internal costs associated with the Federal Communications Commission's Universal Service Fund." *Id.*

[12] *Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45 *et al.*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd. 24952, 24997 (2002).

of their yearly numbering resource requirements," and "a utilization report of their current inventory of numbering resources [that] classif[ies] numbering resources in the following number use categories: assigned, intermediate, reserved, aging, and administrative."[13] Thus, the FCC already has access to—and the carriers already have to report—the assigned number data needed to implement a numbers-based assessment methodology. Further details about the specific reporting method, whether through modifications to the existing Form 499 or use of NRUF reports and NRUF Form 502,[14] on which the aforementioned data is currently reported, can be determined by the Commission based on the record of the proceeding, however, Ad Hoc would not expect that an entirely new data collection process[15] would be necessary or desirable.

Actual calculation of the per-number assessment is a process of simple arithmetic: the Commission would divide the total universal service funding requirements by the total "assigned" numbers. A monthly per-number assessment figure could then be calculated by dividing by 12. Each carrier would then be obligated to contribute an amount equal to the per-number assessment multiplied by the quantity of assessable numbers assigned to it or its customers from the NANP.

Based on current figures and using the definition of an "assessable number" described in Section III.B below, the monthly per-number assessment would be calculated as follows:

[Current Universal Service Fund Obligations] / [12 months] / [Assessable Numbers]

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13 47 C.F.R. §§ 52.15(f)(4)(i), (5)(i), (6)(i).

14 *Further Notice* ¶¶ 333-34.

15 *Id.* ¶ 334.

Assuming approximately $9 billion in demand for USF funds and using the estimate of 770 million numbers set forth in the *Further Notice,*[16] the monthly assessment would equal $0.974 per number ([$ 9 billion in demand] / [12 months] / [770 million assessable numbers]).

The most current data on number utilization necessary to undertake a more refined analysis is contained in a recent Commission report but the data is current only through 2009.[17] Table 1 below contains calculations using this most recent data which yields a per-number assessment of $1.01 per month.

Updated 07/09/2012

Table 1

Monthly Per Number Assessment Required to Fund Current Universal Service Program Demand
(Assuming Exemption for Lifeline Customers)

	Number Category	Units	As of:	Source:
(1)	ILEC numbers	268,113,000	31-Dec-2009	FCC *Numbering Resource Utilization in the US,* Jan 2011
(2)	CLEC numbers	111,346,000	31-Dec-2009	FCC *Numbering Resource Utilization in the US,* Jan 2011
(3)	Toll Free numbers	26,524,069	31-Dec-2009	FCC *Numbering Resource Utilization in the US,* Jan 2011
(4)	Paging numbers	4,496,000	31-Dec-2009	FCC *Numbering Resource Utilization in the US,* Jan 2011
(5)	Wireless numbers	288,516,000	31-Dec-2009	FCC *Numbering Resource Utilization in the US,* Jan 2011
(6)	TOTAL NUMBERS	698,995,069		Sum of lines (1) - (5)
(7)	Lifeline Connections	6,853,640	31-Dec-2009	Jt. Board Monitoring Report 2010, Table 2.1
(8)	TOTAL NUMBERS-BASED UNITS (ASSUMING LIFELINE EXEMPTION)	692,141,429		Line (6) - Line (7)
	USF Program Demand	**Dollars**	**Estimate as of:**	**Source:**
	USF Program Forecast Demand 2010			
(9)	Annualized 2009 Demand	$ 7,470,000,000		Jt. Board Monitoring Report, 2010 Table 1.10,
(10)	Annualized 2010 Demand	$ 8,405,410,000		Jt. Board Monitoring Report, 2010 Table 1.10,
	Calculation of Required Per Number Assessment			
(11)	Total Monthly Numbers-based Units	692,141,429		Line (8)
(12)	Annualized Numbers-based Units	8,305,697,148		Line (11) * 12
(13)	**Required Monthly Per Number Assessment - 2009 Program Demand**	**$ 0.90**		**Line (9) / Line (12)**

16 *Id.* ¶ 310.

17 FCC *Numbering Resource Utilization in the US*, through December 2009.

Notably, the per-month assessment amount of approximately $1.00 has remained largely constant since Ad Hoc first proposed the concept of a numbers-based methodology in 2002. At that time, if the numbers-based methodology had been adopted, the monthly per-number charge would have fallen between $1.02 and $1.07.[18] By 2007, when the USF funding requirement was $7.4 billion, the monthly per number charge would have dropped to $0.97.[19]

B. A Pure Numbers-Based System that Assesses All Numbers on a Non-Discriminatory Basis will Distribute the Contribution Burden Across Competing Services and End Users Fairly.

A pure numbers-based methodology will satisfy the Commission's stated goal of "fairness"[20] but only if the Commission assesses *all* numbers that are classified as "assigned" and does so without regard to the services with which the numbers are being used. Ad Hoc therefore urges the Commission to adopt a definition of "assessable numbers" that applies to all "assigned" numbers as that classification is used in practice by the North American Numbering Plan Administrator (NANPA) and regardless of whether such numbers (i) are working or in use by the end-user, (ii) are used with services that traverse the PSTN or a private network, or (iii) are used with services other than traditional voice service.

Note that this definition of "assigned" numbers differs somewhat from the definition of "Assigned Numbers" found in the Commission's rules, specifically and most importantly with respect to that portion of the definition relating to the requirement

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[18] *See Ex Parte* Letter from James S. Blaszak on behalf of the Ad Hoc Telecommunications Users Committee to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45 (filed Oct. 3, 2002).

[19] Ad Hoc Nov. 19, 2007 *Ex Parte* Letter at Table 1.

[20] *Further Notice* ¶ 24.

that an assigned number be provisioned "under an agreement such as a contract or tariff."[21] It is not clear that in practice numbers are classified as "assigned" in the NANP with regard to the type or existence of a billing relationship between the carrier that obtains the number from the NANP and the customer, potential customer, or device that ultimately uses the number. Rather, the relevant definition for assessment purposes relates to whether the number is capable of "working." Ad Hoc therefore proposes that "assessable" numbers be those classified in the NANP as "assigned," including toll free numbers.[22] This definition will ensure that the base of contributing numbers is comprised of all numbering resources that have been withdrawn from the NANP and are consequently made unavailable by one customer for use by another.

1. The Commission should not adopt any service or end user-based exemptions because of the market-distorting effects of such exemptions.

Ad Hoc does not support exempting any numbers from assessment, except for those numbers assigned to Lifeline subscribers (as explained further below).[23] Similarly, Ad Hoc does not support discriminatory treatment of numbers based on their status or intended use (e.g., cyclical numbers, assigned but not operational numbers, available but not assigned numbers, assigned but not working numbers, numbers used for routing purposes, and toll-free numbers).[24] Ad Hoc has previously opposed

[21] 47 C.F.R. § 52.15(f)(iii).

[22] The Commission can determine as part of this proceeding whether changes to the relevant definitions in Part 52 should be revised in order to implement a numbers-based methodology consistent with the proposals in this section. The Commission may elect not to use the definitions in Part 52 as the relevant definition for an assessable number but adopt a separate and appropriate definition as part of this proceeding.

[23] *Id.* ¶¶ 243-244.

[24] *Id.* ¶¶ 300-306.

exemptions for specific services, such as paging and electronic fax,[25] and continues to oppose additional exemptions for numbers associated with "new" services, such as one-way voice services, e-readers, tablets and others identified by the Commission.[26]

There is no reasoned or legal basis for discriminatory treatment of numbers based on service, technology, or end user. To impose such discriminatory treatment would undermine the integrity and effectiveness of a numbers-based methodology. It would also be fundamentally unfair. Nor should the Commission attempt to favor specific pricing models such as wireless family plans or pooled corporate wireless plans by failing to assess all numbers associated with such models at a uniform rate. To do so would open a floodgate of requests for exemptions on a service by service basis, putting the Commission in the position of having to make market distorting choices about which services are assessed, effectively preserving one of the major shortcomings of the current revenues-based system. Such a move would undermine the basic and simple structure of a pure numbers-based methodology, the major benefit of which is to create a level playing field and allow market forces—not the Commission—to make such determinations.

Finally, market conditions have changed over the last decade since Ad Hoc first argued against including piece-meal special interest exemptions in a numbers-based contribution methodology. And market conditions will change again in the coming decade as service providers replace the "new" services of today with still "newer" services tomorrow. This change is as inevitable as it is desirable. The Commission

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25 Ad Hoc Feb. 28, 2003 Comments at 8.

26 *Further Notice* ¶ 315.

should not stand in the middle of the natural evolution of service offerings by putting its thumb on the scale in favor of certain carrier services or pricing models through the use of assessment exemptions. Rather than pick winners and losers in this evolving marketplace, the Commission should adopt the principled position that all assigned numbers are assessable numbers.

2. Limiting assessment exemptions reduces the monthly per-number assessment, ensuring fairness and affordability to all end users.

Limiting assessment exemptions also has a practical but critically important effect on the overall integrity of a numbers-based methodology—it minimizes the amount of the per-number assessment and requires the broadest possible base of end users to contribute to the funding of universal service. Put simply, universal service funding is a zero sum game. The cost of exempting particular services, providers or end users is shifted to those services, providers or end users that do not enjoy an exemption. The Commission should ensure that no service, provider or end user gets a free ride.

The Commission should assess the largest base of numbers possible so that the per-number assessment is as low as possible. This will ensure that the assessment is affordable for all and that the cost of funding universal service is equitably distributed. At an anticipated monthly per-number assessment of approximately $1.00 with an exemption for low income consumers enrolled in Lifeline included, a pure numbers-based methodology with limited exemptions provides a fair and affordable assessment.

Parties asserting otherwise or claiming consumers will experience “rate shock” resulting in unaffordable service should submit evidence supporting such claims. Based on the estimated $1.00 per number monthly assessment and inclusion of an appropriate exception for low income subscribers enrolled in Lifeline, it is hard to imagine that such an assessment is unaffordable. Ad Hoc has previously introduced data in this proceeding establishing the elasticity of demand for local telephone service noting that the likely price "increase" resulting from a number assessment would be exceedingly low, and the potential drop in residential connectivity resulting from such increase to be "immeasurably small."[27] Ad Hoc reiterates its assertion that the monthly per-number assessment is fair and affordable for all end users based on the data it has submitted. To the extent other parties claim that the estimated per-number assessment is unaffordable or would otherwise affect end-user connectivity, the Commission should require that such claims be supported by actual data.

The Commission should also consider the affordability of a $1.00 per number monthly USF assessment replacing the existing revenue-based contributions made by consumers by referring to its own data regarding current consumer expenditures on communications services. Historically, the only telecommunications service purchased by typical households may have been basic wireline POTS. Today's consumers, however, spend nearly $200 per month on the purchase of wireline voice and data, wireless voice and data, cable TV, and high speed Internet access.[28] Even if a change

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[27] *See* Ad Hoc April 22, 2002 Comments at 10-18; Ad Hoc Nov. 23, 2005 *Ex Parte* Letter at 5.

[28] *See Trends in Telephone Service,* FCC WCB/IATD, September, 2010, Tables 3.3, 3.4, 3.2 and Chart 2.5, http://www.fcc.gov/wcb/iatd/trends.html (last accessed July 9, 2012) (*"FCC Trends"*); *Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992; Statistical Report on Average Rates for Basic Service, Cable Programming Service, and Equipment,* MM Docket No. 92-266, Report on Cable Industry Prices, 26 FCC Rcd. 1769, at Table 11 ("FCC Cable Pricing Report"). BEA data reported by the Commission reveals that annual expenditures on telephone, Internet access and wireless service combined increased from $146-Billion in 2000 to $215-Billion in 2009. (*FCC Trends,* Table 3.3). Expressed on a per household, per month basis the increase equals about *$36 per month in additional expenditures* spent, on average, *per household* during that same period. Part of this results from the large increase in the percentage of households purchasing high-speed Internet access (increased from 4% to 63% from 2000 to 2009) (*Id.,* Chart 2.5) and part results from the tremendous growth in wireless revenues during this same period. The FCC also reports data it obtains from the TNS

in contribution methodology to a numbers-based system results in an overall increase in contribution obligations for a particular household (which, it bears noting, is not a certainty) that increase will represent a very modest and reasonable addition to the overall level of today's household's expenditures on telecommunications-related services.

3. An assessment exemption for Lifeline subscribers is appropriate.

An exemption for numbers associated with Lifeline subscribers is appropriate, however, for reasons of fairness, both in administering the contribution methodology and in promoting well-established public policy objectives associated with the Low Income Fund. It makes little sense to impose contribution obligations on numbers associated with Lifeline when Lifeline is, in turn, subsidized by the funds raised through the assessment. Given the recent changes to the Lifeline program and the current limitations imposed on the contribution obligations that incumbent ETCs are permitted to pass through to Lifeline subscribers, exempting Lifeline from assessment under a number-based methodology makes sense. Furthermore, even though numbers associated with Lifeline subscribers have grown dramatically in recent years, exempting just under 15 million Lifeline subscribers from assessment will not materially raise the per-number assessment on non-exempt services. To the extent that the per-number

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database (*Id.,* Table 3.1) that reveals an even greater revenue increase – a $49 per month increase in average household telecom spend between 2000 and 2008 (increasing from a $76 monthly average in 2000 to a $125 average in 2008). A separate FCC analysis of expenditures on cable TV and Internet access services furnished by cable TV companies reports an average spend among cable TV customers for video and Internet services, as of January 1, 2009 of $107.64 per month for "doubleplay" video + Internet. (*FCC Cable Pricing Report,* Table 11) That number, when combined with the "landline telephone service" and "cellular telephone service" monthly spends reported in Table 3.4 of the *FCC Trends* report yields total per household spending on voice (wireline and wireless), Internet access and video of more than $200 per month.

assessment imposes an unaffordable burden on low income end users, the Lifeline program provides an "affordability safety net" for such end users without materially affecting the per-number assessment for those end users that do pay it.

4. The Commission should not assess special access services, adopt a hybrid methodology, or otherwise impose discriminatory contribution obligations on business users.

The Commission seeks comment on how special access services should be treated under a pure-numbers methodology and whether it should adopt a hybrid system that separately assesses connections in addition to numbers.[29] For the reasons set forth below, Ad Hoc opposes the assessment of special access services or the adoption of a hybrid system with a numbers component.

First, as Ad Hoc has previously noted for the Commission, inclusion of special access in the assessment formula under a pure numbers methodology is unnecessary to satisfy funding objectives.[30] The *Further Notice* notes that "any definition of assessable numbers may exclude special access services … that are … assessed today, but that do not include a telephone number" and seeks comment on how such services should be treated under a pure numbers-based approach.[31] Simply put, if the Commission moves to a pure numbers-based methodology, consideration of how to treat specific services becomes irrelevant. One of the significant benefits of moving to a numbers-based methodology is that the Commission no longer has to impose

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29 *Further Notice* at ¶¶ 299, 322-24.

30 *See* Ad Hoc Nov. 23, 2005 *Ex Parte* Letter.

31 *Further Notice* ¶ 299.

assessments on a service by service basis or engage in the line drawing and repeated decision-making associated with such determinations.

The fact that carrier revenues associated with special access services are assessed under the current methodology does not somehow mean that the purchasers of special access services will no longer contribute their fair share to universal service under a pure numbers-based methodology. While business users are large purchasers of special access services, they are also large users of telephone numbers, many of which are used in association with special access services. The Commission does not need to assess both, and assessing one in lieu of the other will not result in shifting the contribution obligation away from business users. Indeed, the contrary is true. Ad Hoc previously submitted data establishing that businesses would contribute *more* under a pure numbers-based assessment relative to what consumers contribute under the current revenues-based regime, and other commenters agreed .[32] This is accomplished without imposing a separate assessment on special access services. We expect that data submitted in the latest round of this proceeding will not materially change the allocation of contribution obligations between business and residential users.

Second, adoption of a hybrid system will significantly undermine the efficiency of a pure numbers-based assessment methodology. As described in Section III.A, *supra,* a pure numbers methodology offers a simple calculation for determining the per-number assessment amount. The quantity of assessable numbers is easily determined and auditable based on NRUF reports that have been compiled for years. Reporting

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[32] *Ex Parte* Letter from James S. Blaszak on behalf of the Ad Hoc Telecommunications Users Committee to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122 (filed Aug. 11, 2006); Ad Hoc Nov. 19, 2007 *Ex Parte* Letter; *see also* Further Notice ¶ 311, n.505 (citing *Ex Parte* Letter from Mary L. Henze, AT&T Services, Inc., and Kathleen Grillo, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45 (filed Sept. 11, 2008), Attach. 2 at 2).

numbers imposes a minimal burden on contributors who already provide the necessary data which is relatively easy to calculate.

Introducing an additional layer for assessing special access services will needlessly complicate the pure numbers methodology and reduce the administrative efficiency associated with it. Data collection on special access connections is different and less reliable than the long-established NRUF reporting on numbers. The Commission will have to exercise considerable, and potentially controversial, discretion in determining the appropriate levels of assessment for special access connections. The record in this proceeding is replete with differing views about the appropriate terms and assessment levels for such connections. Furthermore, pre-determined assessments have the potential to distort market choices and thwart innovation, unless (but, possibly, even if) high speed connections are assessed with economically rational multipliers. In short, a hybrid model introduces all of the subjective issues associated with a connections-based model and undermines the simplicity and efficiency of a pure numbers-based methodology, all of which is entirely unnecessary to fund universal service obligations.

Third, there are no legal or policy justifications for assessing business numbers and connections at a higher rate than residential numbers and connections, and adoption of a hybrid model or assessment of special access connections imposes significant risk of discriminatory or inequitable treatment of services used by business customers. As the Commission rightly notes in the *Further Notice,* it is difficult to comment on specific capacity tiers that have not yet been proposed, however, Ad Hoc will not support, and the Commission cannot legally justify, establishment of assessment tiers that require higher capacity services to subsidize lower capacity services, that create different assessments for residential and business services, or that disproportionately impose contribution obligations on the services, such as special access, or higher capacity speeds that are purchased largely (if not exclusively) by business customers.

C. A Numbers-Based Assessment Provides the Most Specific, Predictable and Sustainable Methodology.

Numbers provide a broad and sustainable base to support universal service assessments. The quantity of assigned numbers is large and distributed across a broad cross-section of end users. Numbers are also used with a wide variety of technologies, services, and devices. Numbers will continue to be used with new devices and new services in the foreseeable future, including technologies not yet introduced to the market, all of which makes numbers an appealing, competitively neutral and technology agnostic alternative upon which to base contribution assessments.

The data regarding numbers is well-established, organized, and, most importantly, reliable. The *Further Notice* cites Neustar's estimate that 770 million numbers are in active use in the United States and NRUF projections that 832 million numbers will be in active use by 2015.[33] Both figures provide evidence that the base of numbers is not only broad and stable but that it is also growing. Indeed, during the decade- long period in which the Commission has contemplated reforming a broken revenues-based contribution methodology, numbers have been steadily growing at the same time that carrier interstate telecommunications revenues were (predictably)

[33] *Further Notice* ¶ 310.

shrinking. Little, if any, credible evidence has been provided to show that demand for numbers by wireline, wireless, cable, and satellite providers for use with voice telephony, telematics, tablets and other devices is likely to shrink in the short or medium term. Quite the contrary—recent changes in marketplace conditions and the introduction of new technologies have actually increased demand for numbers.

Some commenters have asserted that a numbers-based assessment is not "forward looking,"[34] or that market conditions require a "more inclusive methodology."[35] While these statements imply an impending decline in number resource utilization, they lack any supporting data. Indeed, the substantive data that *is* in the record actually refutes these claims. If numbers are not "forward looking" or inclusive of new technologies, those supporting such claims need to explain why demand for numbers has steadily grown over the past five years and why reliable projections indicate that demand for numbers will continue to grow in the foreseeable future. Ad Hoc urges the Commission to look at the actual facts regarding the base of assigned numbers and the likely trends based on reliable data in the near and medium term with respect to numbers, rather than the oft repeated but unsupported claims that numbers are disappearing.

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[34] *Ex Parte* Letter from B. Mutschelknaus on behalf of XO Communications, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122 (filed September 17, 2010) at 1 (arguing that a numbers-based methodology "does not resolve the concern about shrinkage of the base" while simultaneously claiming that a proliferation of new devices such as e-readers and gaming consoles will impose greater demand on number resources).

[35] Further Notice ¶ 324, n.538 (citing *Ex Parte* Letter from Mary L. Henze, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122 (filed August 23, 2010) at 1).

D. A Numbers-Based System is Competitively Neutral and Technology Agnostic.

A wide variety of services, devices and technologies use numbers. Whether an end user connects to the network over a wireline, wireless, cable or satellite connection or uses a traditional landline voice phone or a wireless smart phone, a per-number assessment associated with the end user's choice of connection and technology would be uniformly applied and equitably distributed. The amount of the assessment would be applied without regard to their choice and would not vary based upon the end user's choice.

Thus, a per-number assessment would be competitively neutral, creating a level playing field for all services with respect to the USF assessment. The consumer's choice will be made based upon the factors that should matter: price, features and functionality, and customer service. Furthermore, the assessment is technology agnostic—voice and/or data devices, regardless of what function they perform, or service they use to access the network, would be assessed identically if they use numbering resources.

Those opposed to a numbers-based methodology will inevitably argue that services that do not use numbers will escape assessment. In certain cases, like special access services, this argument is irrelevant because users of special access services also use numbers, often in large quantities and often in association with their special access services. In other cases, the Commission should demand specific data about the quantity of those non-numbered services, the level of "lost assessment revenue" resulting from the use of those services, and, most importantly, whether the adoption of such services will have any material impact on the projected growth in demand for numbering resources. If the data indicates that these services are outliers and would only contribute (or escape assessment of) *de minimis* amounts, the Commission should not reject a simple, efficient and generally fair methodology because every single conceivable service is not included in the assessment scheme.

E. The Commission Has Ample Legal Authority to Adopt a Numbers-Based Assessment Methodology.

A numbers-based assessment methodology satisfies the legal and policy requirements of the Communications Act, and the Commission has sufficient jurisdiction under the Act to adopt a numbers-based assessment. First, consistent with Section 254(b)(5), a numbers-based methodology is a specific, predictable and sufficient mechanism for preserving and advancing universal service. The underlying base against which assessments are made—10 digit numbers from the North American Numbering Plan—is broad and stable.   As stated in the Further Notice, the base of assigned numbers has actually grown over the last six years[36] in stark contrast to the base of carrier revenues for interstate telecommunications services which has demonstrably shrunk over the same period. Furthermore, the base is expected to grow in the short and medium term based upon reasonable reliable projections[37], ensuring a sufficient and stable base for future contributions. NANPA produces semi-annual Numbering Resource Utilization/Forecast (“NRUF”) reports that will further ensure the Commission has a predictable base upon which to assess contribution obligations.

Second, consistent with Section 254(d) of the Act, a numbers-based assessment scheme provides for “specific, predictable, and sufficient” universal service support by

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36 Further Notice ¶ 310.

37 *Id.*

imposing “equitable and nondiscriminatory” contribution obligations on “[e]very telecommunications carrier that provides interstate telecommunications services,” except to the extent that such a provider’s contribution would be *de minimis*.[38] LECs, CMRS and cable providers would contribute to the universal service fund based on the telephone numbers used by their customers, and long distance carriers would contribute based on the toll free (8XX), 900, 500 and other numbers used by their customers. The Commission has additional authority to require “other provider[s] of interstate telecommunications” to contribute on a per-number basis.[39] The Commission would still reserve its discretion to exempt contributions from *de minimis* providers.

Lastly, the Act provides the Commission with “exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States.”[40] This plenary jurisdiction empowers the Commission with broad authority to manage NANP resources and adopt the numbers-based assessment methodology under consideration. Furthermore, this additional explicit statutory authority provided by Section 251(e)(1) has been judicially recognized as covering both the inter- and intrastate aspects of telephone numbers within the United States.[41] Unlike the judicial limitations placed on the Commission’s ability to assess revenues associated with intrastate services by the Fifth Circuit’s *TOPUC* decision,[42] the Second Circuit affirmed that the Commission’s jurisdiction over numbering resources extended to the intrastate

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38 47 U.S.C. § 254(d).

39 *Id.*

40 47 U.S.C. § 251(e)(1).

41 *People of the State of New York v. FCC*, 267 F.3d 91, 102 (2d Cir. 2001).

42 Notice ¶ 331 (citing *Texas Office of Public Utility Counsel v. FCC,* 183 F.3d 393, 446-48 (5th Cir. 1999)).

portion of a service that used such resources.[43] Hence, the Commission should not allow arguments about Section 2(b) limits on its jurisdiction over intrastate services to stop it from imposing an assessment methodology based on telephone numbers but should be mindful of the limits imposed by Section 2(b) on other contribution methodology alternatives, such as revenues. Because Section 251(e)(1) clearly gives the Commission jurisdiction over intrastate aspects of numbering resources, the FCC has ample authority to use telephone numbers as the basis for telecommunications providers' contribution obligations.

IV. A CONNECTIONS-BASED METHODOLOGY IS A VIABLE ALTERNATIVE TO THE CURRENT REVENUES-BASED SYSTEM, BUT IT MUST BE STRUCTURED AND IMPLEMENTED PROPERLY TO ACHIEVE THE COMMISSION'S STATED REFORM GOALS.

In the *Further Notice,*[44] the Commission seeks comment on transitioning the universal service contribution mechanism from a revenues-based approach to a connections-based approach. As a general matter, Ad Hoc believes that a connections-based approach is a viable alternative—and likely improvement—to the current revenues-based methodology. But a connections methodology is significantly more complicated to implement and administer than a numbers-based approach. If the Commission adopts a connections-based approach with assessment tiers, the Commission will have to determine the appropriate speed or capacity levels for each tier which requires a significant amount of initial "line drawing" at the implementation stage;

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[43] 267 F.3d at 102 (holding that Section 251(e) explicitly grants the FCC 'exclusive jurisdiction' over the North American Numbering Plan and its administration" and that "[t]his explicit grant of authority provides the requisite "unambiguous and straightforward" evidence of Congress's intent to "override the command of § 152(b) that 'nothing in this chapter shall be construed to apply or to give the Commission jurisdiction' over intrastate service." (citation omitted)).

[44] *Further Notice* ¶¶ 219-283.

if the tiers are set incorrectly or inequitably, the system will not be efficient, fair sustainable. In addition, the Commission will need to monitor and update the appropriateness of the tier levels once implemented on an ongoing and continuous basis, and develop new data gathering, reporting and auditing processes to manage the methodology. As described in greater detail below, these obligations present a significant challenge to the Commission's stated reform goals.

Ad Hoc could support a non-numbers connections-based methodology if the Commission elects not to adopt the much simpler numbers-based methodology. But the Commission must ensure that any connections-based methodology is conceived and implemented in a fair and non-discriminatory manner and that universal service contribution burdens are distributed equitably across services, users, and connection tiers. Ad Hoc has consistently opposed and will continue to oppose any connections-based methodology that imposes greater assessments on business connections than those imposed on residential/mass market connections or that includes any kind of residual funding mechanism that relies upon extraordinary assessments on business connections or services.[45]

A. A Connections-Based Approach May Not Improve Efficiency due to the Significant Commission Actions Required for Initial Implementation and Ongoing Administration.

Implementation of a connections-based approach will require the Commission to collect substantial amounts of data related to connection counts that is not currently collected in a comprehensive and useful manner. As far back as 2003, Ad Hoc

[45] *Ex Parte* Letter from Andrew M. Brown on behalf of the Ad Hoc Telecommunications Users Committee to Marlene H. Dortch, Secretary, FCC, WC Docket 06-122 (filed Apr. 13, 2012); Ad Hoc Nov. 19, 2007 *Ex Parte* Letter; Ad Hoc Feb. 28, 2003 Comments.

observed that there was little accurate demand data for the connection units when the Commission was considering adoption of a connections-based approach.[46] As the *Further Notice* points out, Form 477 collects some, but not nearly all, of the relevant data[47] and does not do so in a manner that is immediately useful for the Commission's intended purpose in developing a connections methodology. As evidenced by the Commission's questions in the *Further Notice,* a significant amount of data collection, some of it quite challenging, must be undertaken and provided by numerous parties. Establishing the systems to collect such data, and imposing revised reporting obligations on carriers and others to provide connections-based data will require a significant amount of time and effort on the part of the Commission and the expenditure of substantial resources. Yet it is a necessary prerequisite to implementing and administering a connections-based methodology.

The Commission should ensure that the definition of a connection is reasonably simple and straightforward to improve the efficiency of the methodology. Ad Hoc does not support any definition that attempts to assess separately or differently the services that an end user provisions or purchases over a connection. Neither the Commission, nor the end user, nor the provider of the service will be reasonably able to parse the various services transiting a connection nor would attempts to do so be remotely efficient, objective, or easily auditable.

If the Commission adopts assessment tiers, it will need to ensure that it sets the initial tiers fairly, *see infra,* and reserve the right and discretion to revisit the assessment

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[46] *See* Ad Hoc Apr. 18, 2003 Reply Comments.

[47] *Further Notice* ¶ 246.

tiers at a later date. This necessarily creates an ongoing obligation on the part of the Commission to monitor and potentially reset assessment tiers, creating additional inefficiency that would not otherwise exist in a numbers-based methodology where only one level of assessment—the number—exists. A connections-based methodology will not be fully self-executing and will require continued involvement by the Commission to ensure the methodology functions consistent with the other reform goals after it is implemented.

B. Fairness in the Implementation of a Connections-Based Regime Requires that the Commission not Discriminate Against Businesses and the Services Used by Businesses.

1. Connection tiers must be set based upon fairly applied, economically rational standards.

Ad Hoc supports adoption of a connections-based model with capacity-based tiers only if the assessments associated with such tiers are imposed on a fair, non-discriminatory and incremental basis. In response to the Commission's inquiry in paragraph 255 of the *Further Notice,* there is no rational basis or need to distinguish between residential/mass market connections and business/enterprise connections when allocating tier assessments. Connection speeds are speeds, and capacity is capacity, regardless of whether it is purchased for residential or enterprise use. Increasingly, offerings for mass-market connections rival and even exceed the speed and capacity associated with basic business connections, making the legacy distinction between the consumer and enterprise market largely irrelevant.

In establishing and maintaining a tier structure, the Commission should not assume that the balance of contribution obligations between residential consumers and enterprise customers that exists today must be locked in place in perpetuity. The tiers should be established based upon reasonable differentiations of increasing capacity and speed. Total assessments should be determined by the amount required to fund universal service disbursement obligations. Then, and most importantly, assessment burdens should be allocated across tiers incrementally so that each basic unit of capacity or speed is assessed equally and uniformly. The Commission should not impose disproportionately larger assessments on high capacity connections which would needlessly distort the market for and discourage businesses and consumers from purchasing higher speed connections. If the balance of contribution obligations shifts over time due to one group purchasing more speed or capacity than another group, it is appropriate that the group purchasing more capacity contribute more to universal service funding, as long as that increased contribution is proportional to the increase in purchases and allocated fairly.

The Commission should also not underestimate the difficulty in establishing capacity tiers that will be agreeable to a wide range of parties. Vastly differing proposals for capacity-based connection tiers have been presented to the Commission over the past decade, producing little consensus on the appropriate tier levels. For example, Ad Hoc filed comments in response to a series of connections-based proposals in early 2003 to discuss the relative merits and shortcomings of three separate capacity-based proposals that were under consideration: the COSUS tiers (3 tiers), the FCC Staff proposed tiers (4 tiers), and the SBC / Bell South tiers (14 tiers).[48] The potential impact of those plans on purchasers of special access services varied significantly, and agreement on specific proposal was not forthcoming.

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48 *See, e.g.*, Ad Hoc Feb. 28, 2003 Comments; Ad Hoc Apr. 18, 2003 Reply Comments.

2. The definition of an assessable connection should be simple, competitively neutral, and applied without special consideration or exception.

As set forth in Section IV.A above, the Commission should establish a definition for connections that is broad and evenly applied to *all* connections. It would be manifestly unfair to apply differential assessments or to exempt from assessment specific types of connections or services delivered over a connection. The Commission should remain indifferent as to the service provided over a connection and rely upon a set of limited, objective standards, such as a properly established capacity tier, to assess connections. It should resist calls by narrowly interested parties who seek market-distorting competitive advantage by demanding special treatment or avoiding contribution obligations altogether.[49] That said, Ad Hoc does support an exemption for connections to Lifeline subscribers for the policy reasons set forth above in Section III.B.3.

3. A connections-based methodology should not contain a residual funding mechanism.

Under no circumstances should the Commission adopt a residual funding mechanism that requires the services or connections purchased by business users to make up any shortfall in funding obligations not otherwise satisfied by the base of connections assessed under the methodology. A residual funding mechanism would be manifestly discriminatory toward business services and divert capital and resources that businesses could otherwise use to create jobs and develop innovative new products and services. Even if making the distinction between business and consumer

[49] *Further Notice* ¶ 251.

connections is possible based on objective criteria, there is no discernibly rational policy or economic basis for the Commission to impose such discriminatory treatment.

In paragraph 254 of the *Further Notice,* the Commission seeks comment on whether its prior reasoning that multi-line businesses "may be better equipped to understand the fluctuations in assessments from quarter to quarter" that would be used to fund any shortfall in USF funding continues to be relevant under current market conditions. The Commission's reasoning was incorrect a decade ago and remains incorrect today. Business users attempting to establish and comply with annual budgets for telecommunications services struggle with quarterly fluctuations in the contribution factor. An unknown residual funding obligation, which could introduce even greater volatility into end-user contribution obligations, *in addition to* newly established funding obligations based on connections is not fair or justifiable.

Business users are not seeking special treatment or concessions under a connections-based approach to avoid contribution obligations. They are willing to pay their fair share. But the Commission should not then impose extraordinary obligations on business users to fund or make up shortfalls in universal service disbursements resulting from other purchasers of network connections not paying their fair share.

C. The Sustainability of a Connections-Based Methodology Depends Upon the Still Uncompleted Data Collection and the Number of Assessable Connections.

A connections-based methodology is likely more sustainable than the current revenues-based model, however, the lack of data on connection counts and the open determination of what constitutes an assessable connection makes it impossible to conclusively state that implementation of a not-yet-established version of a connections-based methodology is sustainable. The Commission has previously attempted to model a connections-methodology, and Ad Hoc has noted the complexity in doing so without reliable information.[50]

As with the numbers-based methodology, the sustainability of a contributions-based methodology relies in large part upon the breadth of the assessable base. As set forth above, Ad Hoc urges the Commission to limit exclusions, exemptions, or differential assessments that reduce the available number of assessable connections. Furthermore, establishment of tiers that unfairly discriminate between types of users, services and connections undermine the sustainability of a connections-based assessment methodology. Capacity tiers that discourage adoption of higher speeds or distort market choices will undermine the ongoing sustainability of the methodology.

D. The Commission Can Establish a Competitively Neutral and Technology Agnostic Connections Methodology.

A connections-based methodology can be structured so that it is competitively neutral among providers, and technology agnostic among services. Ad Hoc has previously joined others in urging the Commission to ensure that any connections-based methodology is competitively neutral.[51] The Commission should not adopt, and Ad Hoc would not support, a connections-based methodology that includes exceptions or exemptions for specific services or technologies that connect to the Internet or PSTN. Such a methodology would unnecessarily distort market choices with uneven assessments, and place the Commission in the position of picking services and

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[50] Ad Hoc Apr. 18, 2003 Reply Comments at 15-17.

[51] Letter from the Ad Hoc Telecommunications Users Committee, et al., to Julius Genachowski, Chairman, FCC, et al., WC Docket 06-122 (filed Aug. 6, 2011).

technologies, rather than allowing consumers to do so. Such a policy would undermine every one of the Commission's stated goals of efficiency, fairness, and sustainability as well as Ad Hoc's proposed additional goal of competitive neutrality.

V. IF THE COMMISSION RETAINS A REVENUES-BASED METHODOLOGY, IT MUST ADDRESS THE INHERENT FLAWS IN SUCH A SYSTEM BY BROADENING THE BASE OF ASSESSABLE SERVICES AND PROVIDERS ON AN EQUITABLE AND NON-DISCRIMINATORY BASIS.

Parties representing a wide variety of views agree that the current revenues-based system is badly broken.[52] Even though these parties may have different ideas about how to fix the current revenues-based system, all agree that significant reforms are required to address the widely recognized deficiencies of the current contribution methodology. Thus, if the Commission elects to preserve a revenues-based methodology, it should not adopt piecemeal reforms that do not significantly improve the well-established shortcomings of the current system.

A. Reforms can Ameliorate but Will Not Resolve the Fundamental Problems with the Revenues Based Methodology.

Ad Hoc has consistently maintained that the current revenues-based system is inherently flawed. In filings made nearly a decade ago, Ad Hoc observed that the system was unfit to adapt to changing market conditions and should be replaced by a more stable and predictable methodology.[53] The inherent and well-known flaws in the effectiveness and fairness of a revenues based system caused by a shrinking base of assessable revenues, an ambiguously defined body of assessable services, and changing market conditions (including the bundling of services) have resulted in a

52 *Further Notice* ¶ 22 n.86.

53 Ad Hoc April 18, 2003 Reply Comments at 3-9.

contribution factor greater than 14% over the past seven quarters and rendered the current system unsustainable. We also know that the Commission's prior attempts to salvage the revenues-based system through piecemeal reforms, such as adjustments to the wireless safe harbor percentage and the extension of USF contribution obligations to VoIP providers,[54] have proven inadequate to create a sustainable and predictable USF contribution methodology based on carrier revenues.

Fixes to the current system proposed in the *Further Notice*[55] may improve but cannot solve the inherent flaws of a revenues-based system. The Commission will still have to re-draw lines between assessable and non-assessable services which, to the extent they are adequate upon implementation, will almost certainly require reconsideration due to inevitably changing market conditions. Providers will still need to report revenues, a subjective process that the Commission will need to continue overseeing, monitoring, and engaging in the difficult practice of auditing. Incentives for arbitrage and migration to services that are not assessable will necessarily remain in place, threatening the stability and sustainability of the system just as they do today. This system, even if improved, is still the least efficient among the alternatives under consideration by the Commission because it requires significantly greater oversight and hands-on management than a connections- or numbers-based system. It also retains greater structural opportunities for parties to seek alternative services and providers that are not assessed contribution obligations.

[54] *Further Notice* ¶ 21.

[55] *Id.* ¶¶ 101-218.

If, notwithstanding these deficiencies, the Commission proceeds with preservation of the existing revenues system, it should adopt the most comprehensive reforms available that will effectively reduce the contribution factor to all contributors by as much as possible. Such a reduction can only be achieved by distributing the contribution obligations more broadly and equitably across services and providers.

B. The FCC Must Expand the Base of Assessable Providers to Include Broadband Internet Access Service if it Retains a Revenues-Based Methodology.

Any serious reform of the revenues-based methodology requires that the Commission expand the scope of assessable services to include revenues from broadband Internet access services. Ad Hoc strongly supports the extension of contribution requirements to providers of broadband Internet access services in addition to the many other commenters identified in the *Further Notice* that have advocated a similar position.[56] If the Commission fails to include broadband Internet access services as part of any attempt to reform the revenues-based methodology, it will not expand the base of assessable revenues sufficiently to reduce the contribution factor in a meaningful way and will not distribute the contribution burden equitably across the full range of services comprising the telecommunications ecosystem. Therefore, the Commission should not consider exemptions for any form of broadband Internet access.[57]

In accordance with the Commission's statutory mandate, expansion of the assessable base as part of reforming the revenues-based contribution methodology

[56] *Further Notice* ¶ 65, nn.178-79.

[57] *Further Notice* ¶ 84.

must be completed in an equitable and non-discriminatory manner. Such expansion can only be accomplished by assessing all forms of broadband Internet access, regardless of the type of technology (wireline, wireless, satellite or cable) or end user (consumer or enterprise). There is no rational legal or policy justification for imposing assessments on one particular type of broadband Internet access or requiring one class of end user to assume disproportionate obligations to fund universal service.[58] Distinguishing between types of broadband Internet access is inefficient and practically unworkable, requiring carriers to distinguish types of revenues for identical services and the Commission to review and audit the accuracy of such distinctions. It would also create an additional incentive and opportunity for arbitrage when reform efforts should be focused on eliminating such opportunities. Thus, any attempt to incorporate such distinctions in a reformed methodology would be manifestly bad public policy and violate the statutory requirements of Section 254(b) prohibiting such overt discrimination.

In Section IV.B of the *Further Notice*, the Commission seeks guidance on using its permissive authority under Section 254(d) to impose assessment obligations on a service by service basis to service providers whose revenues for specific services do not currently contribute to the contribution base.[59] Engaging in such a process would inevitably reinforce one of the fundamental flaws in the current system—case by case determinations requiring significant Commission discretion and line drawing around specific services, rather than establishment of clear, self-executing rules about contributing services.

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[58] *Id.* ¶¶ 70, 85.

[59] *Id.* ¶¶ 36-73.

Rather than travel down this familiar road, the Commission should focus on a simply stated rule that broadly includes revenues from those services that will materially reduce the contribution factor. Imposition of contribution obligations on services that would contribute *de minimis* revenues and/or upon which the imposition of contribution obligations outweighs the administrative burden of reporting revenues and complying with contribution requirements makes no sense and would undermine the Commission's efficiency objective.

C. The Commission Should Retain the Systems Integrator Exemption.

The *Further Notice* asks whether the Commission should revise or eliminate the systems integrator exemption.[60] Ad Hoc urges the Commission to retain an exemption because none of the factors that led the Commission to adopt the exemption in 1997 have changed significantly since then. If the Commission decides to keep the current revenues-based contribution methodology and to expand contributing services beyond "telecommunications" as defined by the Act, then it must either re-structure the contribution methodology or substantially re-vamp the exemption to ensure that the new system does not impose burdens on systems integrators, their customers, and marketplace competition that outweigh any benefits.

The Commission concluded in the *Fourth Reconsideration* [61] and in its Report to Congress[62] that the public interest is not served by requiring non-facility-based systems

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[60] *Further Notice* ¶ 47. Under the exemption, systems integrators are not required to contribute to universal service if they do not provide services over their own facilities, are not common carriers, and obtain a *de minimis* amount (less than five percent) of their revenues from the resale of telecommunications.

[61] *See generally Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45 *et al*., Fourth Order on Reconsideration and Report and Order, 13 FCC Rcd. 5318, 5472-73, ¶¶ 278-280 (1997) ("Fourth Reconsideration").

integrators with *de minimis* revenues from telecommunications services to contribute to universal service. The Commission adopted the systems integrator exemption after considerable discussion and record evidence regarding the limited role played in the communications marketplace by systems integrators who qualify for the exemption and the relative costs and benefits of imposing a USF contribution burden on them.

As to the limited role of systems integrators in the communications marketplace, the Commission pointed out that systems integrators, by definition, provide integrated packages of a broad range of services and products.[63] Today, those products and services include system design and deployment oversight; management of customer relationships with underlying carriers and vendors; computer capabilities; data storage, management, and security; remote and back-office data processing; customer premises equipment and associated software; equipment maintenance; and help desk functions. They may also include telecommunications. But the provision of telecommunications is only incidental to the core business of systems integrators. Because systems integrators purchase telecommunications from carriers and resell those services to their customers only as an incident to their provision of systems integration services, they do not compete significantly with common carriers that are required to contribute to universal service.[64] Systems integration customers who receive telecommunications from systems integrators choose systems integrators for their systems integration

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62 *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Report to Congress, 13 FCC Rcd. 11501 (1998) (the "Stevens Report"*)*.

63 *Fourth Reconsideration* at 5472, ¶ 278.

64 *Fourth Reconsideration* at 5472, ¶ 279; *Stevens Report* at 11568, ¶ 137.

expertise, not for their competitive provision of telecommunications.[65] By exempting only systems integrators with *de minimis* revenues from contributing services, the current exemption ensures that any systems integrators that are significantly engaged in the provision of telecommunications do not receive an unfair competitive advantage over common carriers or other carriers that are required to contribute to universal service.[66]

The Commission also recognized that the exemption served the public interest because the compliance costs that would otherwise be imposed on exempt entities outweigh the limited dollar benefits of including them as contributors. For systems integrators that qualify under the existing exemption, the administrative costs of developing the internal tracking and accounting systems required to comply with universal service reporting, calculation, and filing requirements remain substantial. [67] But, as the Commission pointed out in the *Fourth Reconsideration*,[68] the dollar impact of excluding them from the contribution base is minimal because the amounts they pay to their underlying carriers are included in the contribution bases of those common carriers; the exemption merely reduces "the total contribution base…by systems integrators' mark-up on telecommunications."[69] Thus, the benefit to the fund of capturing that small incremental amount is vastly outweighed by the compliance costs that would be incurred by systems integrators.

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65 *Fourth Reconsideration* at 5472, ¶ 278-79. *See also Stevens Report* at 11567, ¶ 136.

66 *Fourth Reconsideration* at 5472, ¶ 280. *See also Stevens Report* at 11568, ¶ 137.

67 *Fourth Reconsideration* at 5468, ¶ 269.

68 *Id.* at 5473-74, ¶ 281.

69 *Id.* at 5474, ¶ 281.

It is still the case that systems integrators who qualify for the exemption "do not significantly compete with common carriers that are required to contribute to universal service."[70] And it is still the case that the difference between the contribution paid by a systems integrator's underlying carrier and the contribution the systems integrator would pay absent the exemption is far less than the compliance costs that would otherwise be imposed upon the systems integrator. Accordingly, the Commission should retain the exemption if it retains the current revenues-based contribution methodology. The Commission may decide to revise the current revenues-based contribution methodology by expanding the base of contributing services.[71] If so, then the Commission must, for all of the reasons previously discussed, re-structure the contribution methodology or substantially re-vamp the exemption to ensure that the new system does not impose burdens on systems integrators, their customers, and marketplace competition that outweigh any benefits.

VI. CONCLUSION

In accordance with the foregoing, Ad Hoc urges the Commission to adopt a pure numbers-based contribution methodology. A numbers-based system offers the clearest most efficient methodology for achieving the Commission's stated goals. If the Commission adopts a different methodology, it must ensure that it is implemented and administered in a fair and non-discriminatory manner so that no service, provider, or end user is required to assume an inequitable burden in funding universal service obligations.

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70 *Id.* at 5472, ¶ 279.

71 Further Notice ¶¶ 36-73.

Respectfully submitted,

AD HOC TELECOMMUNICATIONS USERS COMMITTEE

By:

Susan M. Gately
SMGately Consulting, LLC
84 Littles Ave,
Pembroke, MA 02359
617-598-2223

Economic Consultant to
Ad Hoc Telecommunications
Users Committee

Andrew Brown
Levine, Blaszak, Block & Boothby, LLP
2001 L Street, NW, Suite 900
Washington, DC 20036
202-857-2550

Counsel for Ad Hoc Telecommunications
Users Committee

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Certificate of Service

I, Amanda Delgado, hereby certify that true and correct copies of the preceding Comments of Ad Hoc Telecommunications Users Committee were filed this 9th day of July, 2012 via the FCC's ECFS system and by email to:

Best Copy and Printing, Inc. (BCPI)
fcc@bcpiweb.com

Amanda J. Delgado
Legal Assistant
Levine, Blaszak, Block & Boothby, LLP
2001 L Street, NW
Suite 900
Washington, DC 20036